



The Commonwealth of Massachusetts

**DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY**

D.T.E. 05-58

February 28, 2006

Petition of The Berkshire Gas Company, pursuant to G.L. c. 164, § 94A, for approval of a gas transportation agreement between The Berkshire Gas Company and Tennessee Gas Pipeline Company.

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I. INTRODUCTION

On August 26, 2005, The Berkshire Gas Company (“Berkshire” or “Company”), pursuant to G.L. c. 164, § 94A, submitted for approval by the Department of Telecommunications and Energy (“Department”) a firm transportation agreement (“Agreement”) between Berkshire and Tennessee Gas Pipeline Company (“Tennessee”). The Company’s petition was docketed as D.T.E. 05-58.

On October 24, 2005, pursuant to notice duly issued, the Department conducted a public hearing to afford interested persons the opportunity to comment on the Company’s proposal. The Attorney General of the Commonwealth (“Attorney General”) intervened as of right, pursuant to G.L. c. 12, § 11E, and the Department granted a motion for limited participant status to Tennessee.

On January 9, 2006, the Department held an evidentiary hearing. The Company presented the testimony of Karen Zink, president, chief operating officer and treasurer of Berkshire. The Company submitted a brief on January 24, 2006. The evidentiary record consists of 57 exhibits including the responses to information requests and record requests issued by the Department and the Attorney General.¹

II. DESCRIPTION OF THE AGREEMENT

The Agreement provides that Tennessee will provide firm transportation service to Berkshire for a maximum daily quantity (“MDTQ”) of 4,000 dekatherms per day (“Dth/d”)

¹ The Attorney General was represented at the evidentiary hearing but did not file a brief in this proceeding.

for a primary term of twenty years subject to Berkshire's right to decrease the MDTQ in whole or in part effective on May 1 of the twelfth year following the in-service date (or any subsequent May 1 thereafter) (Exhs. BG-1, at 4-5; KLZ-1, at 22). The primary receipt points will be located in the producing regions near the Gulf of Mexico. The primary delivery point will be the interconnection of the Tennessee pipeline and Berkshire's system at Stockbridge, Massachusetts (Exhs. DTE 1-3; BG-1, at 6). Service will be provided at a fixed, negotiated rate for the term of the transportation agreement (Exhs. BG-1, at 5; KLZ-1, at 21). Service will commence on the later of November 1, 2007 or the in-service date for the facility upgrades necessary for Tennessee to provide the service described as part of the Northeast ConneXion Project New England (the "ConneXion Project") (Exh. BG-1, at 5). The ConneXion Project is a pipeline expansion plan that is expected to increase the capacity of Tennessee's system to the New England Region by adding compression facilities in New York and Massachusetts (id. at 3). The ConneXion Project is expected to be available as soon as the 2007-2008 heating season (id.).

III. POSITION OF THE COMPANY

Berkshire explains that, in late 2004, it began to search for a new source of capacity upon learning that certain peak season peaking rights pursuant to an Amended Fuel Purchase Agreement ("AFPA") (Exh. AG 1-3) between Berkshire and the operator of a cogeneration plant located in Pittsfield, Massachusetts would not be available for the foreseeable future (Exhs. BG-1, at 7-8; AG 1-6; Tr. at 12-13). The AFPA had entitled Berkshire to purchase up to 7,500 Dth/d of the plant's gas supply without any demand charges (Exhs. BG-1, at 5-6; AG

1-3; Tr. at 12, 15). The Company pursued short term arrangements to replace the AFPA supply and advised the Department of such actions in the Company's Forecast and Supply Plan filed in 2005 and under review in D.T.E. 05-7 (Exh. AG 1-6; Tr. 38). Berkshire continued to evaluate alternatives for the longer term, including capacity from the ConneXion Project. The Company states that given the benefits of the ConneXion Project and Berkshire's need for a replacement resource, Berkshire agreed to a non-binding commitment for the MDTQ of 4,000 Dth/d and executed the Precedent Agreement on January 21, 2005 (Exh. BG-1, at 10).² Berkshire committed to only 4,000 Dth/d because of delivery constraints at its meter stations (id. at 6; Exh. DTE 1-3).³

The Company states that it performed a comprehensive evaluation of alternative resources (Company Brief at 5). On February, 4, 2005, the Company solicited interest from a number of parties concerning a 35-day service since the AFPA primarily provided benefits during the peak periods (Exhs. KLZ-2; DTE 1-14). After some indications of interest, the Company, on February 22, 2005, sent to the same parties a follow-up solicitation of interest for providing a 90-day or 151-day service (Exhs. KLZ-3; DTE 1-15; DTE 1-16). On March 7, 2005, a formal request for proposal ("RFP") was issued to the seven parties that had

² Except for a contingency for Department approval, the Precedent Agreement became binding on May 2, 2005 (Exhs. BG-1, at 10-11; KLZ-1, at 6).

³ Berkshire recognizes that additional peaking resources will be required. The Company states that it expects to file a petition seeking approval of a contract with Coral Energy Resources L.P. in the near term as part of the Company's strategy to replace the AFPA (Exh. AG 1-12).

expressed interest in the Company's earlier solicitations (Exh. KLZ-5). The Company received four responses to the RFP with a total of eleven specific proposals (Exh. KLZ-6).

The Company compared the services offered pursuant to the Agreement to the proposals received pursuant to the RFP (Company Brief at 5; Exh. BG-1, at 10-11). The Company contends that the Agreement is the least-cost resource on both a per-unit and total seasonal cost basis (DTE-RR-1; DTE-RR-3). The Company states that it considered several non-price factors in deciding to pursue the Agreement (Exh. BG-1, at 12-13). First, the Agreement provides for primary firm delivery that will enhance the overall reliability of the Company's resource portfolio (*id.*; Exh. DTE 2-13). Second, the ability to reduce the MDTQ provides flexibility in the event a more attractive resource becomes available in the future (Exh. DTE 1-13). Third, the Agreement will provide greater balance in term of the Company's ability to take delivery between Zone 0 and Zone 1 on the Tennessee system (Exhs. BG-1, at 12; DTE 2-13). Fourth, the term of the Agreement expires on a different date from other Berkshire transportation commitments, providing stability and diversity benefits to the Company (Exh. BG-1, at 12). The Company contends that the Agreement is consistent with the public interest in that the Tennessee transportation resource fits well with the Company's portfolio objectives and compares favorably to the range of alternative options reasonably available to the Company and its customers (Company Brief at 2, 10).

IV. STANDARD OF REVIEW

In evaluating a gas utility's resource options for the acquisition of commodity resources as well as for the acquisition of capacity under G.L. c. 164, § 94A, the Department examines

whether the acquisition of the resource is consistent with the public interest. Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996). In order to demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, an LDC must show that the acquisition (1) is consistent with the company's portfolio objectives, and (2) compares favorably to the range of alternative options reasonably available to the company at the time of the acquisition or contract renegotiation.

Id.

In establishing that a resource is consistent with the company's portfolio objectives, the company may refer to portfolio objectives established in a recently approved forecast and requirements plan or in a recent review of supply contracts under G.L. c. 164, § 94A, or may describe its objectives in the filing accompanying the proposed resource. Id. In comparing the proposed resource acquisition to current market offerings, the Department examines relevant price and non-price attributes of each contract to ensure a contribution to the strength of the overall supply portfolio. Id. at 28. As part of the review of relevant price and non-price attributes, the Department considers whether the pricing terms are competitive with those for the broad range of capacity, storage and commodity options that were available to the LDC at the time of the acquisition, as well as with those opportunities that were available to other LDCs in the region. Id. In addition, the Department determines whether the acquisition satisfies the LDC's non-price objectives including, but not limited to, flexibility of nominations and reliability and diversity of supplies. Id. at 29.

V. ANALYSIS AND FINDINGS

A. The Request for Proposals Process

The bid solicitation and evaluation process followed by Berkshire for procurement of pipeline transportation capacity in this proceeding was similar to the process approved in recent proceedings. See e.g. The Berkshire Gas Company, D.T.E. 02-56; Bay State Gas Company, D.T.E. 02-52; Keyspan Energy Delivery, D.T.E. 02-54; The Berkshire Gas Company, D.T.E. 02-19. In determining whether the RFP process was fair, open, and transparent, the Department notes that potential bidders were notified of the wide range of potential services that might be proposed and that the bids would be evaluated on a range of both price and non-price factors (Exhs. KLZ-1; KLZ-5; DTE 2-5). Furthermore, the RFP provided potential bidders with the opportunity to ask questions about the RFP process (Exhs. KLZ-1; KLZ-5). No bidder submitted any such questions and the Company received no objections from potential bidders to indicate that a bid was unfairly evaluated (Exh. DTE 2-5). Finally, our review of the responses to the RFP indicates that the Company's proposal compares favorably to current market offerings considering price and non-price factors, as well as current market conditions facing the Company at the time of the execution of the Agreement. Accordingly, the Department finds that the RFP process conducted by Berkshire for the procurement of the Agreement was fair, open, and transparent, and that the proposed contract compares favorably to the range of alternative options reasonably available to the Company and its customers.

B. The Agreement

As described above, the proposed Agreement will provide Berkshire with a firm MDTQ of 4,000 Dth/d of capacity to enable the Company to partially replace the gas supplies no longer available under the AFPA. The record indicates that the Agreement will contribute to the diversity of the Company's portfolio by providing for a more balanced mix of entitlements from Zone 0 and Zone 1 (Exhs. BG-1, at 12; DTE 2-13). Furthermore, the option for the Company to reduce the MDTQ during the twelfth year of the Transportation Agreement adds flexibility to the Company's supply portfolio (Exh. BG-1, at 5). The evidence also indicates that the Transportation Agreement represents the least-cost option to replace the capacity no longer available through the AFPA (DTE-RR-1; DTE-RR-3). The Department finds that Tennessee will expand its capacity through additional compression, rather than construction of incremental pipeline and, as a result, the ConneXion capacity is a least-cost resource (Exh. BG-1, at 3-4). The Department finds that the Agreement is consistent with the Company's resource portfolio objectives established in the Company's most recent forecast and requirements plan in The Berkshire Gas Company, D.T.E. 02-17 (2003).

C. Conclusion

For the reasons stated above, the Department finds that the Agreement enhances the flexibility, reliability, and diversity of the Company's portfolio and is consistent with the Company's portfolio objectives. The Department further concludes that the Agreement compares favorably to the range of alternatives reasonably available to the Company and its

customers at the time of the Agreement. Accordingly, the Department finds that the Agreement is consistent with the public interest and it is approved.

VI. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the firm transportation agreement between Berkshire and Tennessee for Tennessee to provide firm transportation service up to a MDTQ of 4,000 Dths/d for a primary term of twenty years subject to Berkshire's right to decrease the MDTQ in whole or in part effective on May 1 of the twelfth year following the in-service date (or any subsequent May 1 thereafter), filed on August 26, 2005, be and hereby is APPROVED.

By Order of the Department,

/s/

Judith F. Judson, Chairman

/s/

W. Robert Keating, Commissioner

/s/

Paul G. Afonso, Commissioner

/s/

Brian Paul Golden, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).